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By Hand

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, S.W.,
Washington, DC 20554

Re: Ex Parte Communication in ET Docket No. 98-206; RM-9245;
Applications of Broadwave USA et al., PDC Broadband Corporation,
and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-
12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494),
PDC Broadband Corporation (DA 00-1841), and
Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules

Dear Mr. Caton:

This responds to a letter filed in the above-referenced proceedings on behalf of Northpoint Technology Ltd. ("Northpoint") on January 22, 2002¹ (as well as to a flurry of recent Northpoint ex parte presentations identified infra). The January 22 Northpoint Letter was written in response to a letter written to Chairman Powell by the undersigned, on behalf of SkyBridge LLC ("SkyBridge"), dated December 20, 2001.² The December 20 SkyBridge Letter, in turn, was written in response to a letter addressed to Chairman Powell, dated November 28, 2001, from Sophia Collier, the president of

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¹ See Letter to Magalie Roman Salas, Secretary, from J. C. Rozendaal, Esq., dated January 22, 2002 ("January 22 Northpoint Letter").

² See Letter to Hon. Michael Powell, Chairman, from Jeffrey H. Olson, Esq., dated December 20, 2001 ("December 20 SkyBridge Letter"). For convenience, a copy of this letter is attached hereto.

Northpoint.³ The December 20 SkyBridge Letter corrected a number of factual and legal misstatements contained in the November 28 Northpoint Letter.

Conspicuously, the January 22 Northpoint Letter does not challenge the accuracy of any of the points made by the December 20 SkyBridge Letter, save to accuse SkyBridge of using a “crude” estimate of the amount of bandwidth that Northpoint seeks to obtain on a nationwide basis.⁴ It is not clear from the January 22 Northpoint Letter what it was about SkyBridge’s estimate of the spectrum sought by Northpoint that Northpoint finds to be imprecise. Northpoint’s Broadwave affiliates have requested licenses to operate in the 12.2-12.7 MHz band. SkyBridge calculated this to be 500 MHz, a figure repeatedly employed by Northpoint itself.⁵

More importantly, though, despite the January 22 Northpoint Letter’s sub silentio concession as to the accuracy of the points raised in the December 20 SkyBridge Letter, Northpoint persists in its aggressive campaign of distortion and disinformation regarding, inter alia, its comparison of the regulatory treatment accorded to certain satellite and terrestrial systems, and the relative public interest “value” of those systems.

For example, in the January 22 Northpoint Letter, Northpoint attempts to compare the relative merits of the NGSO and MVDDS systems, claiming that its technology is “many times more spectrum efficient than the SkyBridge system or any similar satellite system.”⁶ As a basis for this comparison, Northpoint emphasizes that NGSO systems have sought access to (on average) 3,000 MHz of spectrum, while MVDDS systems seek access to only 500 MHz.⁷ In making this comparison, Northpoint

³ See Letter to Hon. Michael Powell, Chairman, from Sophia Collier, dated November 28, 2001 (“November 28 Northpoint Letter”).

⁴ See January 22 Northpoint Letter at 2.

⁵ The January 22 Northpoint Letter seems to fault SkyBridge for assuming that “each of Northpoint’s towers [will be] theoretically capable of reproducing the entire 500 MHz of bandwidth.” Id. at 2. If, by this statement, Northpoint means that the entire 500 MHz of bandwidth may not be useable in a given operational scenario, SkyBridge does not disagree. Indeed, given the extent to which Ku-band NGSO FSS systems must protect various GSO (both FSS and DBS) systems and point-to-point terrestrial microwave systems, they rarely will have access to the full bandwidth allocated for their use.

⁶ Id. See also Attachment to Letter to Magalie Roman Salas, Secretary, from J. C. Rozendaal, Esq., dated January 14, 2002, at 6 (“January 14 Northpoint Ex Parte Presentation”).

⁷ See January 22 Northpoint Letter at 1-2.

again appears to have overlooked the fact that-- as was pointed out in the December 20 SkyBridge Letter -- the NGSO systems are two-way systems, while Northpoint's is only a one-way system.⁸ So, using Northpoint's comparative mathematics, the NGSO bandwidth must be halved to 1,500 MHz.

More important, though, is the patent inaccuracy of Northpoint's claim that this "disparity" in bandwidth requirements demonstrates some inherent spectrum efficiency on the part of MVDDS systems. This assertion reveals an astonishing lack of understanding of: (1) satellite systems in general, and in particular the extraordinarily complex sharing environment (even without Northpoint's proposed presence in the 12.2-12.7 GHz band) in which Ku-band NGSO FSS systems must operate; and (2) the amount of bandwidth required to offer the sort of global, fiber-like connectivity necessary to provide high-speed, two-way broadband services that the NGSO applicants have proposed. By comparison, Northpoint has, at various times, proposed to offer a mix of local television and pay television channels, with perhaps some internet access service (one-way only). As SkyBridge noted earlier, under Northpoint's theory of spectrum efficiency, the Commission should favor applicants for one-way paging channels over applicants for 3G systems, simply because the latter will require more bandwidth to provide their services.⁹

Despite Northpoint's concession as to the accuracy of the December 20 SkyBridge Letter, Northpoint knowingly continues to mischaracterize other relevant facts and Commission policies in its recent flurry of ex parte presentations to various Commissioners and staff. Some examples are addressed below.

In the January 14 Northpoint Ex Parte Presentation made to Commissioner Abernathy and her Senior Legal Advisor, Bryan Tramont, Esq., Northpoint claimed that its Broadwave applications should be exempt from an auction because, in the August 2001 Ka-band GSO licensing orders, the Commission granted eleven "companies . . . 66,000 MHz of spectrum without an auction," and that, in those orders, "[n]o assertion [was raised] that [the] ORBIT [Act] prohibited [an] auction."¹⁰ As Northpoint well knows (and has conceded sub silentio), only approximately 2,000 MHz of Ka-band

⁸ See December 20 SkyBridge Letter at 3.

⁹ See December 20 SkyBridge Letter at 3 n.4.

¹⁰ See January 14 Northpoint Ex Parte Presentation at 6. See also Attachment to Letter to William F. Caton, Acting Secretary, from J. C. Rozendaal, Esq., dated February 5, 2002 (memorializing an ex parte presentation to members of the General Counsel's Office, including Jane Mago, Esq., Michelle Ellison, Esq., Adam Krinsky, Esq., and David Horowitz, Esq.) ("February 5 Northpoint Ex Parte Presentation") at 2.

spectrum were licensed in that August 2001 decision.¹¹ Moreover, as Northpoint also well knows (and also has conceded sub silentio), the fact that there was no reference to the ORBIT Act in those orders results from the fact that, in the end, there was no mutual exclusivity in the Ka-band GSO licensing proceedings. Without mutual exclusivity, there can be no auction under Section 309(j), and thus no need to rely on, or even cite to, the ORBIT Act's narrow prohibition against auctions involving applicants seeking to provide international satellite services.¹²

¹¹ See December 20 SkyBridge Letter at 2. Alternatively, as SkyBridge noted, if Northpoint insists that 66,000 MHz is the correct figure for the Ku-band assignments, then Northpoint must acknowledge that it actually is seeking upwards of 15 million MHz of spectrum for its exclusive use. Id. at 2-3.

¹² See id. at 3-4. Northpoint elsewhere makes a number of similar, patently erroneous assertions regarding the Commission's use of auctions with respect to other satellite systems.

At page 8 of the January 14 Northpoint Ex Parte Presentation, Northpoint claims that 5,800 MHz of DBS spectrum has been licensed without an auction. See also February 5 Northpoint Ex Parte Presentation at 5. First, of course, the 5,800 MHz figure is incorrect; each DBS satellite is licensed to operate, co-frequency, on the same approximately 1,000 MHz. (Using Northpoint's mathematics, the DBS service's "auction-free" 5,800 MHz would have to be compared to the 15 million MHz that Northpoint seeks (auction-free) nationwide. See December 20 SkyBridge Letter at 2-3.) Second, while it is true that only once before, in 1996, has the Commission held an auction for DBS systems, that does not represent a "no [DBS] auction policy," as claimed by Northpoint. See January 14 Northpoint Ex Parte Presentation, at 8. The 1996 DBS auction simply reflects the only time that the Commission has been confronted by conflicting applications for a limited number of DBS orbital locations that could not otherwise be resolved.

Another instance of Northpoint's mischaracterization of the Commission's auction policies appears at page 1 of a January 31, 2002, letter memorializing another Northpoint ex parte presentation, this one to Monica Shah Desai, Esq., Commissioner Martin's Legal Advisor. See Letter to Magalie Roman Salas, Secretary, from J. C. Rozendaal, Esq., dated January 31, 2002 ("January 31 Northpoint Ex Parte Presentation"). There, Northpoint complains that the Ku-band NGSO FSS applications will be granted without an auction. Further, Northpoint characterizes this outcome as "hypocrisy" on the part of the satellite industry. See Letter to Monica Shah Desai, Esq., from J. C. Rozendaal, Esq., dated February 4, 2002 ("February 4 Northpoint Letter") at 1. See also February 5 Northpoint Ex Parte Presentation at 2. Of course, as SkyBridge demonstrated in the December 20 SkyBridge Letter, at 3, even in the absence of the ORBIT Act, no auction would be required in the Ku-band NGSO licensing proceedings because no mutual exclusivity exists among those

Additionally, Northpoint claims that it is being treated differently from The Boeing Company (“Boeing”), citing to the Commission’s grant of a limited waiver (without seeking competing applications or holding an auction) to Boeing for its two-way “Connexions” service.¹³ Again, Northpoint’s claims are well wide of the mark. The Connexions Order¹⁴ merely created a limited exception to the Ku-band FSS allocation, to permit Boeing to use FSS transponders to provide certain aeronautical services via 800 earth stations located on aircraft. This is a far cry from Northpoint’s request to create an entirely new terrestrial service (with 10-15,000 transmitters nationwide) in a satellite band. Moreover, Northpoint ignores the fact that Boeing is subject to complex and detailed coordination requirements to protect government and FSS licensees operating in the band, including technical parameters cooperatively developed in the ITU-R process by Boeing and various FSS licensees. Northpoint’s attitude to date, with respect to protecting satellite services, stands in sharp contrast to Boeing’s.

Another example of Northpoint’s continued creative use of facts appears at page 2 of the Attachment to a January 24, 2002 Letter to Magalie Roman Salas, Secretary, from J. C. Rozendaal, Esq. (“January 24 Northpoint Ex Parte Presentation”), which reported an ex parte presentation made by Northpoint to Commissioner Copps and his Legal Advisor, Paul Margie, Esq. There, Northpoint complains that, while 3,250 MHz have been allocated for NGSO-FSS service at Ku-band, only 500 have been allocated for the MVDDS, and that, with access to only 500 MHz, Northpoint is hard-pressed to protect NGSO-FSS and DBS systems.¹⁵ Of course, Northpoint was on notice

applicants; the NGSO applicants’ ability and willingness to share the allocated spectrum on a noninterference basis hardly constitutes “hypocrisy.”

Similarly, Northpoint’s claims regarding the fact that various terrestrial licenses have been granted to, e.g., Nextel and AT&T, and that CARS licenses have been granted to various cable system operators, all without an auction, is both irrelevant and misleading. See January 14 Northpoint Ex Parte Presentation at 6; February 5 Northpoint Ex Parte Presentation at 2, 4. As SkyBridge previously pointed out, those cases typically do not involve mutually exclusive applications, which, by definition, obviates the need for an auction. See December 20 SkyBridge Letter at 4 n.11. In the instant case, applications that are mutually exclusive with Northpoint’s Broadwave applications have been tendered for filing, thus rendering Northpoint’s proffered terrestrial examples inapposite.

¹³ See January 14 Northpoint Ex Parte Presentation at 6; February 5 Northpoint Ex Parte Presentation at 2-3.

¹⁴ See The Boeing Company, DA 01-3008 (Int’l Bur., released December 21, 2001).

¹⁵ See January 24 Northpoint Ex Parte Presentation at 2. See also January 31 Northpoint Ex Parte Presentation at 1; February 5 Northpoint Ex Parte Presentation at 1.

from at least February 1997, when SkyBridge filed its NGSO-FSS application (almost a year before Northpoint's Broadwave applications were filed), that its proposed terrestrial system would have to cope with both DBS and NGSO systems. Moreover, Northpoint's effort to obtain an allocation for its service always has been limited to the 500 MHz in 12.2-12.7 MHz band; Northpoint has rejected out of hand using other bands which are not burdened by the presence of satellite systems (and bands in which Northpoint has acknowledged that its technology would work). Put simply, the Commission can hardly be criticized (at least by Northpoint) for granting Northpoint its wish.

Finally, Northpoint's attempt to wiggle under the limited umbrella of the ORBIT Act is wholly without merit.¹⁶ It is beyond dispute that Congress generally favors the award of licenses by auction in cases involving mutually exclusive applicants for the same license. It is equally beyond dispute that the narrow exception to that general rule created by the ORBIT Act -- for applicants for international satellite system licenses -- was created solely to avoid the massive delay and disruption that such applicants would face if they had to endure serial auctions held by each country that these global systems might seek to serve. By prohibiting the FCC from holding auctions in such cases, Congress hoped to dissuade other countries from viewing U.S.-licensed global satellite systems as "cash cows." Northpoint's proposed domestic terrestrial service implicates no such policy concerns. There is no discernable public interest rationale, no reasonable reading of the statutory language, and no legitimate interpretation of Congressional intent that supports Northpoint's theory. The Supreme Court and D.C. Circuit decisions cited by Northpoint are readily distinguishable on their face.

As SkyBridge has demonstrated on repeated occasions, there is no factual, legal or public policy basis for Northpoint's claim that it is the victim of Commission discrimination vis à vis satellite systems, or that it is otherwise entitled to special dispensation. Northpoint has built its case on a series of patently inapposite and/or incorrect assertions of fact and law. It is unfortunate that, despite its implicit acknowledgment in the January 22 Northpoint Letter that this is so, Northpoint continues to wage its aggressive campaign of disinformation.

¹⁶ See February 5 Northpoint Ex Parte Presentation at 6.

William F. Caton, Acting Secretary

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If there are any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Olson', with a long horizontal line extending to the right.

Jeffrey H. Olson
Attorney for SkyBridge LLC

Attachment

cc: Via Facsimile & Hand Delivery
Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Robert Pepper
Peter Tenhula, Esq.
Bryan Tramont, Esq.
Paul Margie, Esq.
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December 20, 2001

VIA FACSIMILE AND HAND DELIVERY

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

Re: Ex Parte Communication in ET Docket No. 98-206; RM-9245;
Applications of Broadwave USA et al., PDC Broadband Corporation,
and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-
12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494),
PDC Broadband Corporation (DA 00-1841), and
Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules

Dear Mr. Chairman:

I am writing on behalf of SkyBridge LCC ("SkyBridge") in response to a letter addressed to you from Sophia Collier, president of Northpoint Technologies ("Northpoint"), dated November 28, 2001 (the "Collier Letter"). The Collier Letter attempts to create the impression that Northpoint has been the victim of a bias in the Commission's licensing processes that favors certain satellite services and disfavors certain terrestrial services. More particularly, the Collier Letter proffers the theory that it is somehow inherently unfair that licenses for a domestic terrestrial microwave service, such as that proposed by Northpoint, might be awarded by auction while various satellite licenses are not. In her effort to make this case, Ms. Collier grossly mischaracterizes a number of relevant facts and regulatory policies. SkyBridge will not attempt to correct all of Ms. Collier's erroneous assertions (they are legion), only the more glaring ones.

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At the outset, one point must be reaffirmed: Whether Northpoint or any other MVDDS applicant is awarded a license to operate in the 12.2-12.7 GHz band is of concern to SkyBridge only to the extent that such a system may cause interference to its satellite services. MVDDS systems such as Northpoint's will not compete with SkyBridge in the marketplace, and the imposition of appropriate technical limits on MVDDS operators should eliminate SkyBridge's interference concerns. Nonetheless, the extent to which the Collier Letter distorts the facts and policies underlying various satellite regulatory matters, including ones that directly affect SkyBridge, compels SkyBridge to correct the record.

In her letter, Ms. Collier complains that the Commission awarded (without an auction) some 66,000 MHz of spectrum to various Ka-band satellite applicants in August of 2001 (plus 84,000 MHz previously awarded for Ka-band satellite services). She finds the Commission's "largess" troubling, compared to the Commission's failure to expeditiously grant Northpoint's request for "only" 500 MHz.¹

Ms. Collier's calculus is more than slightly misleading. Obviously, there are not 150,000 MHz (66,000 plus 84,000) of spectrum allocated for satellite services at Ka-band. This past August, licenses were awarded covering a total of 34 Ka-band orbital locations. Each satellite was authorized to operate in the same approximately 2000 MHz (66,000 divided by 34). If Ms. Collier's concern is that Ka-band satellites are licensed to operate in a wider band of spectrum than the 500 MHz sought by Northpoint, 2,000 MHz provides a more accurate and useful comparison.

Alternatively, if Ms. Collier insists that 66,000 MHz of Ka band spectrum is the proper basis for comparison, then, using her calculus in a consistent manner, the 500 MHz that Northpoint seeks must be multiplied by the 10-15,000 individual transmitter sites that Northpoint claims that it and its affiliates will operate nationwide. In other words, Northpoint is, in reality, seeking between 5 million and 7.5 million MHz of spectrum just for its own use, compared to the 150,000 MHz awarded to multiple Ka-band satellite applicants over the past several years. Northpoint cannot have it both ways.

Ms. Collier uses this same misleading type of comparison later in her letter, claiming that the Ku-band NGSO FSS applicants in the above-referenced proceedings (including SkyBridge) are seeking a total of 24,500 MHz (compared to Northpoint's more "modest" request for 7.5 million MHz).² In reality, each of the NGSO FSS applicants seeks, on average, approximately 3000 MHz of shared spectrum (there is considerable variation, depending on the particulars of each applicant's technical

¹ See Collier Letter at 1.

² Id. at 2.

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approach and business plan; for example, Skybridge has requested a minimum of one GHz in both the uplink and downlink bands). These NGSO systems must share this 3000 MHz in a manner that avoids interference into other NGSO systems (as well as avoiding interference to GSO satellites (both FSS and DBS) and various point-to-point terrestrial services). Indeed, the Commission presently is conducting a separate rulemaking to develop this NGSO/NGSO spectrum sharing plan.³

Moreover, it is worth noting that both the Ka-band systems and the Ku-band NGSO FSS systems that so concern Northpoint will be providing two-way services, while Northpoint's is only a one-way service (Northpoint's "upstream" link is the telephone network). So, to continue to use Northpoint's comparative formula in a consistent manner, the relevant satellite bandwidth must be halved, or Northpoint's request doubled, to 10-15 million MHz. Again, Northpoint cannot have it both ways.⁴

In addition to her mischaracterizations regarding the relative bandwidth needs and desires of various unrelated applicants and services, Ms. Collier expresses concern that the operators of certain satellite systems do not have to compete for licenses at auction, while many terrestrial services (particularly ones indistinguishable from Northpoint's proposed service) do.⁵ Again, Ms. Collier's discussion of this point is distinctly misleading.

First, many satellite licenses, including most of the domestic DBS licenses which appear to be of greatest interest to Ms. Collier, were awarded prior to the 1993 enactment of Section 309(j); no auction could have been held in those cases under any circumstances. Second, the number of orbital locations that were available in those early DBS processing rounds was sufficiently large that mutual exclusivity was avoided; even if Section 309(j) had then been in effect, no auction would have been required. Finally, Ms. Collier complains that the ORBIT Act's narrow exemption from Section 309(j) for international satellite systems is somehow unfair to Northpoint.⁶ Ms. Collier's criticism

³ Establishment of Policies and Service Rules for the Non-Geostationery Satellite Orbit Fixed-Satellite Service in the Ku-Band, FCC 01-134, released July 19, 2001.

⁴ Ms. Collier's analysis totally ignores the differing bandwidth requirements for different services (e.g., broadband versus narrowband) operating in different frequency bands (e.g., 2.5 GHz versus 38 GHz) using different technologies (e.g., low earth orbit satellite versus geostationary satellite versus terrestrial microwave). Under Northpoint's theory, a 3G system should be assigned the same bandwidth as a one-way paging channel.

⁵ See Collier Letter at 3.

⁶ Id. at 2.

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completely ignores the unassailable rationale that Congress explicitly relied on in creating that narrow exception to its general rule favoring auctions in cases involving mutually exclusive applications, a rationale wholly inapplicable to a domestic terrestrial microwave system such as that proposed by Northpoint. Allegations of Commission favoritism toward satellite services are absurd.⁷

Examined in the light of reality, Ms. Collier's assertions can be seen for what they are: the complaints of an applicant obviously dissatisfied with the Commission's regulatory process, but unable to identify anything unfair, unlawful or otherwise inappropriate with regard to the manner in which that process has been applied to its application.⁸ Nothing required Northpoint to attempt to force its terrestrial service into a band reserved for satellite services, particularly when several other bands are specifically allocated for the sort of services proposed by Northpoint (e.g., 2.5 GHz, 24 GHz, 28 GHz, 38 GHz), bands that would permit Northpoint to provide true two-way service. Nothing required Northpoint to propose a technology, and insist upon power levels that are guaranteed to cause substantial harmful interference to those satellite services.⁹ In brief, Northpoint's problems are entirely of its own making.

⁷ See Collier Letter at 1. In pursuit of her theory that the Commission discriminates against terrestrial services such as those proposed by Northpoint, Ms. Collier notes the obvious fact that even some terrestrial services are not awarded by auction, citing to "10,259 wireless licenses for both mobile and fixed microwave services" that were awarded in 2001 without an auction. *Id.* at 2. However, Ms. Collier fails to provide any details regarding how many of these licenses were, by statute, exempt from Section 309(j), because, *inter alia*: (1) there was no mutual exclusivity involved; (2) those grants involved renewal applications; or (3) the licenses were for private radio or public safety services, or for state or local governments or educational uses. The fact that 10,259 terrestrial licenses may have been granted without an auction is not evidence of unfairness or prejudice to Northpoint or anyone else.

⁸ Indeed, the Northpoint/Broadwave applications, which have never been accepted for filing, are, in reality, not applications at all. Instead, they vaguely describe the Northpoint technology and then ask for a blanket waiver of any and all rules that might otherwise be violated by Northpoint's proposal. Even in the absence of the debate over Northpoint's interference potential, these applications could not even begin to be processed, let alone granted, in their current state.

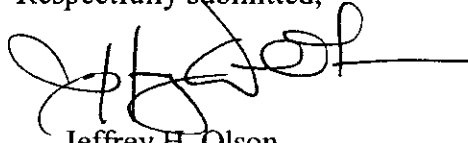
⁹ Ms. Collier's claim that "almost a year ago, the Commission issued an order declaring terrestrial services based on [Northpoint's] technology could share with the eight [proposed Ku-band NGSO FSS] systems" is misleading. All the Commission concluded in the Report and Order referenced by Ms. Collier is that, as an abstract proposition, NGSO FSS and certain MVDDS systems may be able to share spectrum,

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In sum, fundamental fairness has nothing at all to do with Ms. Collier's stated concerns; nor do issues of regulatory uncertainty or delay. Northpoint wants free spectrum, while its competitors -- MMDS, DEMS, LMDS -- had to pay for theirs, either at auction or in the aftermarket. There is no statutory basis or public interest rationale that supports affording Northpoint the special dispensation that it seeks.

If there are any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Jeffrey H. Olson

Attorney for SkyBridge LLC

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provided appropriate power limits and other technical constraints are imposed on the terrestrial system. To date, Northpoint has yet to propose, let alone accept, technical limits that would adequately protect most, if not all, of the NGSO FSS systems.

With respect to Northpoint's dispute with the DBS operators regarding interference to DBS systems, SkyBridge would only note that the MITRE Report cannot be fairly read as supporting Northpoint's claim that its operations will be benign vis-à-vis DBS systems.